

1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
GEORGE AIRDAY,

5 Plaintiff,

6 - against -

14-cv-8065 (RWS)

7 THE CITY OF NEW YORK, KEITH SCHWAM
8 and DAVID M. FRANKEL,

9 Defendants.

10 -----X

11 DEPOSITION OF KEITH SCHWAM, taken by
12 Plaintiff, pursuant to Notice, at the Law Offices of
13 Nathaniel B. Smith, on Thursday, March 30, 2017,
14 commencing at 10:48 a.m., before Chandra D. Brown, a
15 Registered Professional Reporter and Notary Public
16 within and for the State of New York.

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25 Job #25835

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2 Q How was this letter sent to Marshal
3 Airday?

4 A I remember it was hand delivered to his
5 office. It may also have been mailed. It
6 probably was.

7 Q Did you obtain anybody's approval before
8 sending this letter?

9 A No.

10 Q Did you have any discussions with
11 Mr. Baxter about this letter before sending it?

12 A No.

13 Q Why did you send this letter to Marshal
14 Airday?

15 A To inform him that a successor had been
16 appointed to his term -- excuse me, to the
17 office that he previously held, and that his
18 service as a marshal had ended, and that,
19 accordingly, he needed to surrender his badge
20 and identification card, and to ask him to
21 contact our office for additional information
22 regarding the wind-down procedure or
23 termination of office procedure.

24 Q And why did you make this recommendation
25 or decision to have a successor appointed for

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2 his office?

3 A Well, first of all, that was a -- the
4 appointment of a successor was expressly
5 authorized by the law.

6 My reasons for recommending that that be
7 done had to do with Marshal Airday's conduct
8 and judgment that was exposed in the aftermath
9 of his two arrests in December 2011 and
10 January 2012.

11 Q And what was that conduct that led you to
12 make this recommendation?

13 A It involved several elements. One, the
14 marshal was in possession unlawfully of two
15 firearms. Two, that fact became known after
16 the marshal was arrested on a domestic violence
17 charge, and was under an obligation to
18 surrender all of his firearms.

19 The fact that he was arrested within four
20 weeks of the domestic violence arrest with
21 facts that indicated that he had not
22 surrendered all his firearms as directed by the
23 court, and that he had been in possession for
24 some period of time before his domestic
25 violence arrest of an unregistered firearm were

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2 the principal acts that caused me to make the
3 recommendation.

4 Those acts, in turn, to me reflected
5 judgment that fell far short of the standard
6 that I believe was warranted for someone who
7 is, Number 1, mayoral appointee; and Number 2,
8 holding the position that involves the
9 scrupulous attention to rules, court orders,
10 and adherence to the law in situations that
11 involve actions that -- the position involves
12 actions taken against members of the public.

13 So the position involves a mayoral
14 appointment, a delegation of very serious
15 authority to take away people's property, to
16 remove people's vehicles, to remove people from
17 their homes, to remove money from people's bank
18 accounts. Those are very serious
19 responsibilities that call for uncompromised
20 integrity, mature judgment, adherence,
21 scrupulous adherence to rules, laws and court
22 orders and basic seriousness in how the person
23 goes about conducting their affairs, both
24 personal and official.

25 The conduct that I described and the fact

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2 that the marshal having been arrested once
3 failed to do the things that were required of
4 him to stay well clear of being arrested again,
5 and that he had not done those things and that,
6 in fact, done the opposite, said to me that we
7 need to replace Marshal Airday.

8 Q Are there any other reasons for why you
9 made the recommendation to replace Marshal
10 Airday?

11 A No.

12 Q You mentioned that Marshal Airday was
13 arrested for a domestic violence incident; is
14 that correct?

15 A Correct.

16 Q When did you first learn about
17 Marshal Airday's arrest for a domestic violence
18 incident?

19 A I believe it was shortly after the arrest.

20 Q How were you informed?

21 A That may have been the one that
22 Ken Litwack called me about. We are
23 notified -- my office is notified when marshals
24 are arrested through several mechanisms. So I
25 believe I had more than one report regarding

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2 the marshal's arrest, and I believe that was
3 the one that Ken Kelly called me about.

4 Excuse me. Not Ken Kelly. Ken Litwack.

5 Q Ken Litwack.

6 You believe Ken Litwack called you up
7 about the domestic violence arrest?

8 A I believe so.

9 Q And you also were notified by the New York
10 State Criminal Justice Department, weren't you?

11 A Correct.

12 Q That's an automatic system that lets you
13 know that?

14 A Yes.

15 Q And you had been notified of other
16 marshals being arrested through that same
17 system, hadn't you?

18 A From time to time.

19 Q Who?

20 A I can't remember specific means of
21 notification. If your question goes to --

22 Q Well, my question is: Who else do you
23 remember getting notified, one way or the
24 other, that they were arrested who was a City
25 marshal who was under your supervision?

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2 A I have no recollection of his being in the
3 scofflaw program.

4 Q During your investigation, did you ask him
5 to resign?

6 A Not that I recall.

7 (THIS CONCLUDES CONFIDENTIAL PORTION.)

8 Q After you got the call from Litwack
9 alerting you --

10 MR. SEACORD: Are we done with Shapiro?

11 MR. SMITH: Yes, we are.

12 MR. SEACORD: Okay. So we're no longer
13 confidential.

14 MR. SMITH: Right. Thank you.

15 BY MR. SMITH:

16 Q After you got the call from Litwack
17 alerting you to Marshal Airday's arrest, what
18 did you do?

19 A I can't be certain that the call from
20 Litwack was the first, you know, but --

21 Q Okay. So let me rephrase the question.
22 Fair enough. I'll rephrase the question.

23 After you learned that Marshal Airday had
24 been arrested in December of 2011, what did you
25 do?

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2 A My recollection is that we opened a file
3 on it. Whether we made that a formal
4 investigation, I'm not certain, but we
5 certainly made a record in our system
6 certainly. I believe we obtained some of the
7 records. I don't recall whether we sent any
8 correspondence to Mr. Litwack or the marshal
9 concerning his obligations to inform DOI of the
10 disposition of the matter.

11 I don't have a specific recollection of
12 doing that, but we might have. I'm sure I
13 would have at least told Ken Litwack to make
14 sure that was done.

15 Q What records did you obtain regarding
16 Marshal Airday's arrest for the domestic
17 violence?

18 A It would be standard. I don't have a
19 specific recollection of the precise records
20 that we obtained, but it would be standard for
21 us to obtain a copy of the arrest report from
22 the police department, possibly the charging
23 instrument in the Criminal Court.

24 If there were other police reports on the
25 matter, we might have, but I don't have a

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2 specific recollection of what particular
3 records we obtained.

4 Q After you obtained those records, did you
5 take any disciplinary action against Marshal
6 Airday?

7 A Based on the December arrest?

8 Q Yes.

9 A Not at that time but upon his second
10 arrest.

11 Q Okay. We'll get to that.

12 A Yeah.

13 Q Okay.

14 So after the first arrest, you got your
15 records, you didn't take any steps. You opened
16 up an investigation, formal or otherwise.

17 Is that fair to say?

18 A I didn't say we didn't take any steps.

19 Q You didn't take any steps.

20 A We were gathering basic information.

21 Q You were gathering information.

22 A Yeah. Yes.

23 Q All right.

24 What happened next?

25 MR. SEACORD: Objection.